



February 17, 2011

Via Electronic Submission

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20th and C Streets, N.W.  
Washington, DC 20551

Re: Debit Card Interchange Fees and Routing (Docket No. R-1404)

Ladies and Gentlemen:

The Electronic Check Clearing House Organization ("ECCHO") is a not-for-profit national check clearinghouse that is 100 percent owned by its over 3,000 member financial institutions dedicated to promoting electronic check collection and related payment system improvements.<sup>1</sup>

ECCHO appreciates the opportunity to provide the Federal Reserve Board ("Board") with comments in response to the Board's notice of proposed rulemaking ("Proposed Rule") regarding proposed new Regulation II, Debit Card Interchange Fees and Routing.<sup>2</sup>

The Dodd-Frank Act amends the Electronic Fund Transfer Act ("EFTA")<sup>3</sup> by regulating interchange transaction fees and rules for debit card transactions. The Dodd-Frank Act states that the definition of "debit card" under the Act "does not include paper checks."<sup>4</sup> As a result, the provisions of the Dodd-Frank Act regulating debit card transactions do not apply to check payment transactions.

The Proposed Rule further defines "debit card" as "any card, or other payment code or device, issued or approved for use through a payment card network to debit an account, regardless of whether authorization is based on signature, personal identification number (PIN), or other means, . . . and any general-use prepaid card."<sup>5</sup> The Proposed Rule also

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<sup>1</sup> ECCHO was created in 1990 by banks as a cooperative venture to encourage the implementation of private sector electronic check presentment and check image exchange, including by promulgating and maintaining check clearinghouse rules governing electronic check presentment and check image exchange (the "ECCHO Rules"). ECCHO's over 3,000 member financial institutions represent U.S. financial institutions of all sizes. During 2010, ECCHO member financial institutions used check images to exchange under the ECCHO Rules approximately 7.9 billion transactions totaling \$9.9 trillion. ECCHO is recognized across the U.S. as the national provider of private sector check image exchange rules. The views expressed in this letter do not necessarily reflect the views of each ECCHO member financial institution.

<sup>2</sup> 75 *Fed. Reg.* 81722 (December 28, 2010).

<sup>3</sup> 15 U.S.C. § 1693 *et seq.*

<sup>4</sup> EFTA, Section 920(c)(2).

<sup>5</sup> 75 *Fed. Reg.* at 81755.

expands the statutory exclusion for paper checks from the definition of “debit card” to exclude from the definition of debit card any “check, draft, or similar instrument, or electronic representation thereof.”<sup>6</sup> The supplementary information to the Proposed Rule states that this expanded exclusion for paper checks and electronic representations thereof reflects the fact that paper checks may be imaged and submitted electronically for presentment to the paying bank.<sup>7</sup>

ECCHO supports the Board’s approach in the Proposed Rule to interpreting the statutory definition of “debit card” to expressly exclude checks that are cleared and presented electronically. ECCHO believes this exclusion from the definition of “debit card” for electronic check collection, such as check image exchange, is appropriate for several reasons.

First, as reported by the 2010 Federal Reserve Payments Study, nearly all interbank checks are now cleared electronically, which has increased the efficiency of check clearing.<sup>8</sup> At the time of this Federal Reserve survey, an estimated 96% of interbank checks involved the replacement of the original paper check with electronic payment information at some point in the collection process, compared to an estimated 43% at the time of the prior 2006 survey.<sup>9</sup> The 2010 Federal Reserve Payments Study further found that an estimated 16.2 billion items were presented to the paying depository institution via image exchange in 2009.<sup>10</sup> Accordingly, failure to recognize “electronic representations” of checks, drafts or similar paper instruments within the check exception to the definition of debit card would largely as a practical matter eliminate this check exception.

Second, check images are substantially similar payments to their paper check counterparts. A merchant payee must still receive and handle the paper check from its customer, and deposit the paper check to the merchant’s bank in either paper form or by means of remote deposit capture (RDC) image deposit. This negotiation and exchange of the paper check at the merchant location is governed by check law, not the EFTA/Regulation E. While check images are processed electronically by collecting banks, the legal rights and obligations of the collecting banks, depositing customers and paying customers to the check image payment are substantially the same as the rights and obligations applicable to paper checks. The Uniform Commercial Code, clearing house rules, and customer agreements govern the processing, posting, return and adjustment of check images. The electronic collection, presentment or return of check images through the check collection system

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<sup>6</sup> *Id.* at 81730.

<sup>7</sup> *Id.*

<sup>8</sup> The 2010 Federal Reserve Payments Study: Noncash Payment Trends in the United States: 2006-2009, at 19 (December 8, 2010).

<sup>9</sup> *Id.* at 8.

<sup>10</sup> *Id.* at 12.

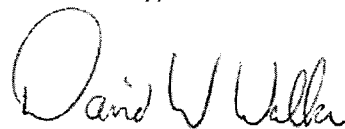
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similarly is not covered under the EFTA/Regulation E.<sup>11</sup> As an operational matter, check images, like paper checks, are handled by collecting and paying banks in an “off-line” and batch basis, and merchants are not provided with point of sale authorization or guarantee of payment/settlement. Return of check images is subject to the same “midnight deadline”, Regulation CC timeframes and other legal requirements as the return of the paper check. Finally, under the Check 21 Act and the Federal Reserve Board’s Regulation CC implementing the Check 21 Act, check images can be converted into a legally equivalent paper item, in the form of a substitute check, at any time by any bank in the check collection/return process.

Third, there is no economic or policy reason to treat check images differently from paper checks for purposes of Section 920 of the EFTA. For all of the economic and policy reasons relevant to the check exception to the debit card definition, check images and paper checks are equivalent. Most particularly, collecting banks, clearing houses and image exchange networks for both paper checks and check images do not impose interchange fees on check payments (that is, check images like paper checks are collected at “par”).

In the event of any questions regarding this letter, or if ECCHO can be of any assistance to the Board in its consideration of the Proposed Rule, please do not hesitate to contact me at (214) 273-3201.

Sincerely,

A handwritten signature in black ink, appearing to read "David Walker". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Walker".

David Walker  
President

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<sup>11</sup> Regulation E Official Staff Commentary 205.3(b)(1)-2(iv).